

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.02.2020

Judgment pronounced on : 10.03.2020

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.1523 of 2010

T.N.S.Saleem

... Appellant/Petitioner

Versus

1.Ranganathan

2.The Divisional Manager,
United India Insurance Company Ltd.,
No.46, Katpadi Road,
Vellore.

... Respondents /Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, pleaded to enhance the award dated 21.08.2009 passed in M.A.C.T.O.P.No.22 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Thiruvannamalai.

For Appellant : Ms.A.Subadra,
for Ms.M.Malar

For Respondents: Mr.S.Arunkumar (for R2)

: Ex-parte - R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant [claimant], challenging the award dated 21.08.2009 passed in M.A.C.T.O.P.No.22 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Thiruvannamalai.

2.For the sake of convenience, hereinafter the parties are referred to as per their litigative status before the Tribunal.

3.It is a case of injury. The case of the claimant before the Claims Tribunal is that on 26.11.2001 at about 10.45 hours, when the claimant was walking on the Tiruvannamalai to Manalurpet Road, an Auto bearing Registration No.TN-01-J-2400, driven by its driver in a rash and negligent manner and dashed against the claimant. Due to the said accident, the claimant sustained severe multiple injuries and he had taken treatment in the Government Hospital, Tiruvannamalai. For the said accident a case has been registered under Sections 279 and 338 of I.P.C., against the driver of the Auto, in Crime No.1395 of 2001. The claimant took prolonged medical treatment in various hospitals by spending huge amounts. Prior to the accident, the claimant was working as an employee in a Vedio Cassette shop

and earning a sum of Rs.3,000/- per month. Due to the accident, now the claimant could not attend the work, accordingly, he filed a claim petition, claiming a sum of Rs.1,00,000/- as a compensation towards the injuries sustained by him.

4.Opposing the claim made by the claimant, by filing counter, the second respondent/Insurance company denied the accident itself and stated that the accident took place, not due to the rash and negligent act of the Auto driver. At the time of accident, the claimant has suddenly crossed the road without following the road traffic rules. Without any valid driving license, Registration Certificate (RC), Permit and Insurance policy, the driver had driven the Auto and dashed against the claimant. Since the Auto was driven by its driver without having any valid license, the Insurance company is not liable to pay the compensation as claimed by the claimant.

5.It is the further contention of the Insurance company, that in the wound certificate issued in favour of the claimant, the Doctor had endorsed that the accident took place, at the time the claimant was riding his Hero Majestic Moped. The above said fact was suppressed by the claimant. Hence, the Insurance Company has prayed for dismissal of the Claim Petition.

6.Before the Claims Tribunal, the appellant [N.S.Saleem] examined himself as P.W.1 and one Dr.K.Raveendiran, who issued the disability certificate, was examined as PW.2. On the side of claimant, 6 documents were exhibited as Ex.P1 to Ex.P6. On the other hand, on the side of the respondents none have been examined and further no documents were produced to prove their contentions.

7.Having considered all the materials placed him, the learned Presiding Officer Claims Tribunal came to the conclusion that due to rash and negligent act of the Auto driver, the accident had occurred and further held that since the said vehicle was insured with the second respondent, the second respondent is liable to pay the compensation fixed by the Claims Tribunal. Now, only challenging the said quantum of compensation, the claimant has approached this Court by way of filing the present Civil Miscellaneous Appeal and prayed to enhance the award dated 21.08.2009 made in the impugned order.

8.When the appeal is taken up for hearing, I have heard the arguments of Ms.A.Subadra, learned counsel for the appellant, Mr.S.Arunkumar, learned counsel appearing for the second respondent and also perused the records carefully.

9.Initially, on going through the counter averments filed by the second respondent, it is the case of the second respondent is that the accident had not occurred as alleged by the claimant. However, to prove the said averment, the burden of proof in terms of Section 106 of the Indian Evidence Act, 1872 would be on the respondent's side. Since the said fact is within the special knowledge. In this occasion, before the Claims Tribunal, in order to prove, especially, in respect to the contentions made in the counter affidavit, nobody was

examined on the side of the respondent, so inaction on the part of the respondent reveals the fact that the averments contained in the counter affidavit is false one.

10.It is very easy for the respondents to examine the driver and other witness, who will be a best evidence to prove their case. In fact, the alleged medical certificate issued in favour of the claimant, which was specifically mentioned in the counter affidavit, has not been marked as exhibits before the Claims Tribunal. Therefore, it cannot be held that the case of the second respondent/Insurance company is true one, accordingly, the liability fixed on the second respondent is upheld by this Court as above.

11.In respect to the quantum of compensation fixed, the learned counsel for the appellant/claimant would contend that the quantum arrived at by the Claims Tribunal is not appropriate for the injuries sustained by the claimant.

12.Now, on going through the submissions made by both the counsel, it is not in dispute, the doctor examined on the side of the claimant has stated before the Tribunal as the claimant has sustained 35% of partial permanent disability. Though the same was disputed by the second respondent, the Claims Tribunal made in an elaborate discussions and came to the conclusion that the claimant sustained 25% of partial permanent disability. As per the case of the claimant, during the time of the accident, the claimant has not sustained any functional disability, he sustained fracture on right leg and 2nd molar teeth, and it could not hold as functional disability.

13.On the other hand, at the time of calculating the compensation, the Claims Tribunal by following the principles of a pre-determined structural formula mentioned under Section 163 (A) of the Motor Vehicles Act, 1988 calculated the compensation by way of multiplier method, which is nothing to against the settled principles of the Motor Vehicles Act. However, challenging the same, the second respondent/Insurance company has not filed any appeal. Hence, it is not necessary for this Court to interfere with the said finding.

14.However, on going through the exhibits marked on the side of the claimant, the exhibits would not disclose the fact that the claimant was employed in the Video stall. Therefore, in all aspects, the claimant fails to prove that there was loss of income incurred by him. Therefore, this Court is of the opinion that the compensation fixed by the Claims Tribunal is well within the purview of the law and interference of this Court is not warranted.

15.In the result, the Civil Miscellaneous Appeal is dismissed,

(i) by confirming the award dated 21.08.2009 passed in M.A.C.T.O.P.No.22 of 2003 before the Motor Accident Claims Tribunal (Principal Subordinate Court), Thiruvannamalai.

(ii) the appellant/claimant is entitled to the award amount of Rs.50,000/- [Rupees Fifty thousand only] as determined by the Tribunal, along with 7.5% interest per annum from the date of petition till the date of realisation.

(iii) the first and second respondent are jointly and severally liable to pay the compensation as determined by the Claims Tribunal along with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) on such deposit, the appellant [claimant] in this appeal is permitted to withdraw the same, by moving necessary application before the Tribunal.

(v) the claimant is directed to pay necessary Court fee, if any, on the awarded compensation. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

klr

To

The Motor Accident Claims Tribunal
(Principal Subordinate Court),
Thiruvannamalai.

+lcc to Mr.M.Malar, Advocate, S.R.No. 22080

+lcc to Mr.S.Arun Kumar, Advocate, S.R.No. 21756

C.M.A.No.1523 of 2010

BP(CO)
GN(11/05/2021)

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